

**IN THE SUPERIOR COURT OF THE STATE OF DELAWARE**

<b>STATE OF DELAWARE</b>	)	ID. No. 1411010212
	)	In and for Kent County
	)	
v.	)	RK14-12-0112-01
	)	Rape 1 <sup>st</sup> < 12(F)
<b>ADRIAN B. RIGBY,</b>	)	RK14-12-0113-01
	)	RK14-12-0114-01
Defendant.	)	RK15-12-0115-01
	)	Rape 4 <sup>th</sup> < 16 (F)

**COMMISSIONER'S REPORT AND RECOMMENDATION**

**Upon Defendant's Motion for Postconviction Relief  
Pursuant to Superior Court Criminal Rule 61**

Kathleen A. Dickerson, Deputy Attorney General, Department of Justice, for the State of Delaware.

Adrian B. Rigby, *Pro se*.

FREUD, Commissioner  
October 25, 2017

The defendant, Adrian B. Rigby ("Rigby"), pled guilty on March 8, 2016 to one count of Rape in the First Degree, victim under 12 years old, 11 *Del. C.* § 773, and three counts of Rape Fourth Degree, victim under 16 years old, 11 *Del. C.* § 770 as lesser included offenses of one count of Rape in the First Degree and two counts of Rape in the Second Degree. In exchange for his plea the State allowed Rigby to plea to lesser included offenses and recommended a sentence of forty years

suspended for the minimum mandatory sentence of fifteen years incarceration on the Rape in the First Degree charge and one year incarceration pursuant to 11 *Del. C.* 4204(k) on each of the Rape in the Fourth Degree charges. Due to the nature of the charges and the age of the victim, Rigby faced enhanced sentencing and a minimum mandatory sentence of twenty-five years incarceration on each Rape in the First Degree charge and the possibility of life imprisonment on each charge. The Court agreed with the State's recommendation and sentenced Rigby to a total of forty-three years incarceration suspended after eighteen years for probation, fifteen of which were minimum mandatory. On June 17, 2016, Rigby filed a Motion for Review of Sentence which the Court denied. Rigby did not appeal his conviction or sentence to the Delaware Supreme Court. He filed, *pro se*, the pending motion for postconviction pursuant to Superior Court Criminal Rule 61 on July 29, 2016.

### **FACTS**

The charges stemmed from two incidents. On November 17, 2014, Rigby was arrested for having intercourse vaginally and digitally penetrating vaginally on two separate occasions the eleven year old daughter of his girlfriend. The abuse came to light when Rigby's girlfriend went into her daughter's room and observed Rigby with his pants down standing over the victim who had her panties pulled down around her feet. The victim and her mother reported the incident to the Delaware State Police. During the interview with the police, the victim explained that on November 16, 2014 (the day her mother discovered the pair) that Rigby had inserted a finger into her vagina and subsequently vaginally penetrated her with his penis. The victim also stated that Rigby had also vaginally penetrated her another time with both his penis

and finger and that had occurred between October 1, 2013 and October 31, 2014. An examination of the victim was done at Kent General Hospital which confirmed vaginal injuries.

### **RIGBY'S CONTENTIONS**

In Rigby's Motion for Postconviction Relief he raises the following grounds for relief:

Ground one: Rigby claims his counsel was ineffective for allowing him to plead guilty because the plea violated his right against double jeopardy under the multiplicity doctrine.

Ground two: Rigby claims his counsel was ineffective for coercing him to plead guilty.

### **DISCUSSION**

Under Delaware law, this Court must first determine whether Rigby has met the procedural requirements of Superior Court Criminal Rule 61(i) before it may consider the merits of his postconviction relief claim.<sup>1</sup> This is Rigby's first motion for postconviction relief, and it was filed within one year of his conviction becoming final. Therefore, the requirements of Rule 61(i)(1) - requiring filing within one year and (2) - requiring that all grounds for relief be presented in initial Rule 61 motion, are met. None of Rigby's claims were raised at the plea, sentencing, or on direct

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<sup>1</sup> *Bailey v. State*, 588 A.2d 1121, 1127 (Del. 1991).

appeal. Therefore, they are barred by Rule 61(i)(3), absent a demonstration of cause for the default and prejudice. Both of Rigby's claims are based on ineffective assistance of counsel; therefore, he has alleged cause for his failure to have raised them earlier.

At this point, Rule 61(i)(3) does not bar relief as to Rigby's grounds for relief, provided he demonstrates that his counsel was ineffective and that he was prejudiced by counsel's actions. To prevail on his claim of ineffective assistance of counsel, Rigby must meet the two-prong test of *Strickland v. Washington*.<sup>2</sup> In the context of a guilty plea challenge, *Strickland* requires a defendant show: (1) that counsel's representation fell below an objective standard of reasonableness; and (2) that counsel's actions were prejudicial to him in that there is a reasonable probability that, but for counsel's error, he would not have pled guilty and would have insisted on going to trial and that the result of a trial would have been his acquittal.<sup>3</sup> The failure to establish that a defendant would not have pled guilty and would have proceeded to trial is sufficient cause for denial of relief.<sup>4</sup> In addition, Delaware courts have consistently held that in setting forth a claim of ineffective assistance of counsel, a defendant must make concrete allegations of actual prejudice and substantiate them

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<sup>2</sup> 466 U.S. 668 (1984).

<sup>3</sup> *Id.* at 687.

<sup>4</sup> *Somerville v. State*, 703 A.2d 629, 631 (Del. 1997)(citing *Albury v. State*, 551 A.2d 53, 60 (Del. 1988))(citations omitted).

or risk summary dismissal.<sup>5</sup> When examining the representation of counsel pursuant to the first prong of the *Strickland* test, there is a strong presumption that counsel's conduct was professionally reasonable.<sup>6</sup> This standard is highly demanding.<sup>7</sup> *Strickland* mandates that, when viewing counsel's representation, this Court must endeavor to “eliminate the distorting effects of hindsight.”<sup>8</sup>

Following a complete review of the record in this matter, it is abundantly clear that Rigby has failed to allege any facts sufficient to substantiate his claim that his attorney was ineffective. I find trial counsel’s affidavit, in conjunction with the record, more credible that Rigby’s self-serving claims that his counsel’s representation was ineffective. Rigby’s counsel clearly denies the allegations.

As noted, Rigby was facing substantial incarceration time including the possibility of life in prison had he been convicted, and the sentence and plea were reasonable under all the circumstances, especially in light of the evidence against him. Prior to the entry of the plea, Rigby and his attorney discussed the case. The plea bargain was clearly advantageous to Rigby. Counsel’s representation was certainly well within the range required by *Strickland*. Additionally, when Rigby entered his guilty plea, he stated he was satisfied with defense counsel’s performance.

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<sup>5</sup> See e.g., *Outten v. State*, 720 A.2d 547, 557 (Del. 1998) (citing *Boughner v. State*, 1995 WL 466465 at \*1 (Del. Supr.)).

<sup>6</sup> *Albury*, 551 A.2d at 59 (citing *Strickland*, 466 U.S. at 689).

<sup>7</sup> *Flamer v. State*, 585 A.2d 736, 754 (Del. 1990)(quoting *Kimmelman v. Morrison*, 477 U.S. 365, 383 (1986)).

<sup>8</sup> *Strickland*, 466 U.S. at 689.

He is bound by his statement unless he presents clear and convincing evidence to the contrary.<sup>9</sup> Consequently, Rigby has failed to establish that his counsel's representation was ineffective under the *Strickland* test.

Even assuming, *arguendo*, that counsel's representation of Rigby was somehow deficient, Rigby must satisfy the second prong of the *Strickland* test, prejudice. In setting forth a claim of ineffective assistance of counsel, a defendant must make concrete allegations of actual prejudice and substantiate them or risk dismissal.<sup>10</sup> In an attempt to show prejudice, Rigby simply asserts that his counsel was ineffective. His statements are insufficient to establish prejudice, particularly in light of the evidence against him. Concerning Rigby's claim that the plea violates the "multiplicity doctrine" he is simply incorrect. The indictment clearly listed four separate offenses, two each on two separate dates. Thus Rigby pled only to four separate offenses and there was no violation of the "multiplicity doctrine." Therefore, I find Rigby's grounds for relief are meritless.

To the extent that Rigby alleges his plea was involuntary, the record contradicts such an allegation. When addressing the question of whether a plea was constitutionally knowing and voluntary, the Court looks to a plea colloquy to

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<sup>9</sup> *Mapp v. State*, 1994 WL 91264, at \*2 (Del.Supr.)(citing *Sullivan v. State*, 636 A.2d 931, 937-938 (Del. 1994)).

<sup>10</sup> *Larson v. State*, 1995 WL 389718, at \*2 (Del. Supr.)(citing *Younger*, 580 A.2d 552, 556 (Del. 1990)).

determine if the waiver of constitutional rights was knowing and voluntary.<sup>11</sup> At the guilty-plea hearing, the Court asked Rigby whether he understood the nature of the charges, the consequences of his pleading guilty, and whether he was voluntarily pleading guilty. The Court asked Rigby if he understood he would waive his constitutional rights if he pled guilty; if he understood each of the constitutional rights listed on the Truth-in-Sentencing Guilty Plea Form (“Guilty Plea Form”); and whether he gave truthful answers to all the questions on the form. The Court asked Rigby if he had discussed the guilty plea and its consequences fully with his attorney. The Court asked Rigby if he was entering into the plea as he was guilty of the charges. The Court also asked Rigby if he was satisfied with this counsel’s representation. Rigby answered each of these questions affirmatively.<sup>12</sup> I find counsel’s representations far more credible than Rigby’s self-serving, vague allegations.

Furthermore, prior to entering his guilty plea, Rigby signed a Guilty Plea Form and Plea Agreement in his own handwriting. Rigby’s signatures on the forms indicate that he understood the constitutional rights he was relinquishing by pleading guilty and that he freely and voluntarily decided to plead guilty to the charges listed in the Plea Agreement. Rigby is bound by the statements he made on the signed

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<sup>11</sup> *Godinez v. Moran*, 509 U.S. 389, 400 (1993).

<sup>12</sup> *State v. Rigby*, Del. Super., ID No. 1411010212, Tr. at 4 to 13.

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Guilty Plea Form, unless he proves otherwise by clear and convincing evidence.<sup>13</sup> I confidently find that Rigby entered his guilty plea knowingly and voluntarily and that Rigby's grounds for relief are completely meritless.

### **CONCLUSION**

I find that Rigby's counsel represented him in a competent and effective manner and that Rigby has failed to demonstrate any prejudice stemming from the representation. I also find that Rigby's guilty plea was entered knowingly and voluntarily. I recommend that the Court *deny* Rigby's motion for postconviction relief as procedurally barred and completely meritless.

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/s/ Andrea M. Freud

Commissioner

AMF/dsc

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<sup>13</sup> *Sommerville* 703 A.2d at 632.